

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PHILIP RUDOLPH JOHNSON,	)	Case No. 09-2125 SC
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR LEAVE TO FILE
v.	)	<u>SECOND AMENDED COMPLAINT</u>
	)	
AMERICAN CASUALTY COMPANY OF	)	
READING PENNSYLVANIA, a	)	
Pennsylvania Corporation; and DOES	)	
1 through 100,	)	
	)	
Defendants.	)	
	)	
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**I. INTRODUCTION**

Before the Court is Plaintiff Philip Rudolph Johnson's ("Plaintiff" or "Johnson") Motion for Leave to File a Second Amended Complaint ("SAC"). ECF No. 59 ("Mot."). Defendant American Casualty Company ("Defendant" or "American") filed an Opposition. ECF No. 61. Plaintiff filed a Reply. ECF No. 62. For the following reasons, Plaintiff's Motion is GRANTED.

**II. BACKGROUND**

**A. Factual Background**

The Court has previously set forth the facts of the case in detail in its January 5, 2010 Order granting summary judgment in

1 favor of Defendant. See ECF No. 35 ("Jan. 2010 Order"). The Court  
2 therefore provides only a summary here.

3 On April 8, 2005, Plaintiff was involved in a motor vehicle  
4 accident that caused him injuries. Jan. 2010 Order at 1. The  
5 accident occurred on Highway 50 in El Dorado County in California,  
6 when John Ryan ("Ryan") lost control of the 2002 GMC Sierra he was  
7 driving and collided head-on with Plaintiff's vehicle. Id.

8 On March 17, 2007, Plaintiff sued Ryan seeking damages as a  
9 result of the accident in the Superior Court for the County of El  
10 Dorado. Id. at 2. Ryan tendered his defense to American, but the  
11 insurance company refused to defend or indemnify Ryan. Id.  
12 Johnson and Ryan stipulated to the entry of judgment in favor of  
13 Johnson and against Ryan in the amount of \$750,000. Id. Ryan  
14 assigned to Johnson all claims that Ryan had against American  
15 relating to the insurance policy or American's refusal to defend  
16 Ryan. Id.

17 **B. Procedural Background**

18 On April 7, 2009, Johnson filed suit against American in the  
19 Superior Court for the County of Alameda. ECF No. 1 ("Notice of  
20 Removal") ¶ 1. American removed the case to this Court. Notice of  
21 Removal. On September 11, 2009, Plaintiff filed an Amended  
22 Complaint asserting four causes of action: (1) breach of contract;  
23 (2) bad faith; (3) direct action against insurance carrier pursuant  
24 to Insurance Code section 11580; (4) estoppel, reasonable  
25 expectations and waiver. ECF No. 22 ("FAC.") ¶¶ 19-39.

26 On January 5, 2010, the Court granted summary judgment in  
27 favor of American. Jan. 2010 Order. Plaintiff appealed, and the  
28 Ninth Circuit reversed, finding that triable issues of fact exist

as to whether the Sierra was still insured by American at the time of the accident. ECF No. 39 ("Mem. Dec.").

### III. LEGAL STANDARD

The Federal Rules of Civil Procedure embody a public policy strongly favoring determination of cases on their merits. Accordingly, Rule 15(a)(2) provides that courts "should freely give leave" to amend pleadings "when justice so requires." Leave to amend should be freely given unless the opposing party makes a showing of undue prejudice, bad faith, dilatory motive, or futility of amendment on the part of the moving party. Foman v. Davis, 371 U.S. 178, 182 (1962). Rule 15's policy in favor of leave to amend should be applied "with extreme liberality." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003). "Absent prejudice, or a strong showing of any of the remaining Foman factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend." Id.

### IV. DISCUSSION

Plaintiff seeks leave to file a SAC that would differ from the FAC in three ways: it would add American's parent company -- Continental Casualty Company ("Continental") -- as a defendant; it would amend Plaintiff's bad faith claim to include not only the assigned claim from Ryan but also Plaintiff's own direct claim of bad faith against American for its refusal to pay the state court judgment; and it would add a prayer for punitive damages. Mot. Ex. 1 ("Prop. SAC"). Plaintiff argues that these changes are warranted in light of recent discovery developments and that granting leave

1 to amend will not delay this litigation because no case deadlines  
2 will be affected. Mot. at 3. Defendant argues that Plaintiff's  
3 proposed amendments are futile because they could not withstand a  
4 motion to dismiss under Rule 12(b)(6). Opp'n at 5.

5 A proposed amendment is futile only if no set of facts can be  
6 proved under the amendment that would constitute a valid claim or  
7 defense. Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th  
8 Cir. 1988). For the following reasons, the Court finds that  
9 Defendant has not made the "strong showing" of futility necessary  
10 to overcome the presumption in favor of granting Plaintiff leave to  
11 amend. Eminence Capital, 316 F.3d at 1051.

12 **A. Adding Continental Casualty as a Defendant**

13 Plaintiff argues that adding Continental as a defendant is  
14 necessary because recent discovery has revealed that American has  
15 no employees, and that all of the actions taken on behalf of  
16 American were in fact taken by employees of its parent company,  
17 Continental. Mot. at 2. Plaintiff's Proposed SAC alleges that  
18 Continental is the parent company of American, and that the  
19 employees of Continental acted as agents of American when handling  
20 Ryan's claim. Prop. SAC ¶¶ 3, 5.

21 Defendant argues that adding Continental as a defendant is  
22 futile because all of Plaintiff's claims are predicated upon an  
23 insurance contract to which Continental was not a party. Opp'n at  
24 5-6. Defendant contends that even if Continental acted as  
25 American's agent, an insurance company's agent cannot be held  
26 liable for actions that allegedly resulted in the insurance  
27 company's breach of its contractual obligations to the insured.  
28 Id. (citing Sanchez v. Lindsey Morden Claim Svcs, 72 Cal. App. 4th

249, 254-256 (Ct. App. 1999).

Contrary to Defendant's assertion, a parent corporation may be held liable for the contractual or other obligations of its subsidiary in some circumstances. "While a parent corporation may generally not be held liable for the actions of its subsidiary, it may be held liable if the subsidiary is the parent's alter ego or if the subsidiary acts as the general agent of the parent."

Stickrath v. Globalstar, Inc., 527 F. Supp. 2d 992, 1002 (N.D. Cal. 2007) (internal quotations omitted). A parent corporation may also be held directly liable if it participates in the wrongdoing of its subsidiary. Id. (citing United States v. Bestfoods, 524 U.S. 51, 64-65 (1998)).<sup>1</sup>

Thus, Plaintiff may be able to amend his FAC to state a plausible claim against Continental if he can allege facts showing that: (1) American was the alter ego of Continental; (2) American was the general agent of Continental; or (3) Continental participated directly in the alleged wrongdoing. Plaintiff has failed to allege sufficient facts to support any of these theories in his Proposed SAC, but he has attached evidence to his Motion that suggests he may be able to do so.<sup>2</sup> Accordingly, Plaintiff may

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<sup>1</sup> Plaintiff erroneously cites Harris v. Rutsky & Co. Ins. Servs., Inc., 328 F.3d 1122, 1134 (9th Cir. 2003), regarding the agency test "for imputation of contracts." Reply at 7. Plaintiff misquotes an excerpt from Harris that actually refers to the "imputation of contacts" for personal jurisdiction purposes.

<sup>2</sup> In support of his Motion, Plaintiff provided deposition testimony from Defendant's Federal Rule of Civil Procedure 30(b)(6) designee that, according to Plaintiff, shows Continental participated directly in the alleged wrongful acts. Mot. at 8-9; Burke Decl. Ex. 2. However, in his Proposed SAC, Plaintiff has not alleged the relevant facts set forth in the deposition testimony. Instead, the Proposed SAC merely states that all references to American collectively refer to both American and Continental. Prop. SAC ¶

1 amend the FAC to add Continental as a defendant, but he should  
 2 allege in his SAC the particular facts on which Continental's  
 3 alleged liability is predicated.

4 **B. Amending the Bad Faith Claim**

5 In his FAC, Plaintiff alleged that American breached the duty  
 6 of good faith and fair dealing owed to Ryan, and that Plaintiff was  
 7 entitled to damages for the breach as Ryan's assignee. FAC ¶¶ 23-  
 8 26. Plaintiff now seeks to amend his bad faith claim to allege  
 9 that American also owed a duty of good faith and fair dealing  
 10 directly to Plaintiff in his capacity as a judgment creditor, and  
 11 that American breached this duty by refusing to pay Plaintiff  
 12 despite the stipulated judgment he obtained against Ryan in state  
 13 court. Mot. at 5. Plaintiff wishes to include emotional distress  
 14 allegations as well. Id.

15 Plaintiff contends that Hand v. Farmers Ins. Exch., 23 Cal.  
 16 App. 4th 1847 (Ct. App. 1994), authorizes a bad faith claim against  
 17 an insurer for failure to pay a judgment creditor. Defendant  
 18 argues that Hand is inapposite. The Court agrees with Plaintiff.

19 In Hand, the California Court of Appeal held that "an  
 20 unreasonable, bad faith refusal to pay a judgment creditor claimant  
 21 the entire amount of the judgment, after it becomes final,  
 22 implicates some recognizable duty of good faith by the insurer  
 23 under its policy, which was intended to benefit such a third party  
 24 beneficiary." Id. at 1857. The court further explained: "[T]he

25  
 26 5. This is insufficient to state a plausible claim against  
 27 Continental. Plaintiff should include in his SAC factual  
 28 allegations supporting a theory of liability as to Continental. In  
 other words, to withstand a motion to dismiss, Plaintiff should  
 plead the facts he cites in his Motion as evidence that Continental  
 is liable for the actions of American.

1 duty not to withhold in bad faith payment of adjudicated claims  
2 runs not only in favor of the insured but also in favor of a  
3 judgment creditor." Id. at 1858. "To this end, once having  
4 secured a final judgment for damages, the plaintiff becomes a third  
5 party beneficiary of the policy, entitled to recover on the  
6 judgment of the policy." Id.

7 Hand clearly recognizes a claim by a judgment creditor such as  
8 Johnson against an insurance company for failure to pay the amount  
9 of the judgment. Defendant argues that Hand is inapposite because  
10 "the conduct now complained of by [Plaintiff] happened before he  
11 became a judgment creditor." Opp'n at 7. This argument misses the  
12 mark because the conduct complained of by Plaintiff is American's  
13 failure to pay Plaintiff after he secured the state court judgment.  
14 See Prop. SAC ¶ 28. This conduct occurred after Plaintiff became a  
15 judgment creditor.

16 **C. Adding Prayer for Punitive Damages**

17 Lastly, Defendant argues that Plaintiff cannot allege facts  
18 plausibly supporting a claim for punitive damages. Opp'n at 8. A  
19 California tort plaintiff may recover punitive damages if he can  
20 prove "by clear and convincing evidence" that the defendant acted  
21 with "oppression, fraud, or malice." Cal. Civ. Code § 3984(a).  
22 Defendant argues that the facts presented during the summary  
23 judgment proceedings show that Defendant's conduct was at least  
24 reasonable, even if Defendant does not eventually prevail at trial.  
25 However, the Court's task at this juncture is not to weigh the  
26 evidence previously presented; rather, the Court must determine  
27 whether Plaintiff's Proposed SAC, on its face, plausibly states a  
28 claim that could support the imposition of punitive damages. The

1 Court finds that Plaintiff's bad faith claim contains factual  
2 allegations that, if proven, might entitle Plaintiff to an award of  
3 punitive damages. Therefore, allowing Plaintiff to amend his FAC  
4 to include a prayer for punitive damages would not be futile.

5  
6 **V. CONCLUSION**

7 For the foregoing reasons, the Court GRANTS Plaintiff Philip  
8 Rudolph Johnson's Motion for Leave to File a Second Amended  
9 Complaint against Defendant American Casualty Company of Reading  
10 Pennsylvania. Plaintiff shall file his Second Amended Complaint  
11 within thirty (30) days of this Order.

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13 IT IS SO ORDERED.

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15 Dated: August 22, 2011

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17 UNITED STATES DISTRICT JUDGE  
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